

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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[www.montgomerycountymd.gov/content/council/boa/index.asp](http://www.montgomerycountymd.gov/content/council/boa/index.asp)

**Case No. A-6204**

**PETITION OF TIMOTHY G. BENDER**  
(Hearing held May 16, 2007)

**CORRECTED OPINION OF THE BOARD**  
**CLERICAL CORRECTION: REQUESTED VARIANCE AND EXHIBIT NUMBER**  
(Effective date of Opinion, July 17, 2007)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Section 59-C-1.326(b)(2) and 59-C-1.326(a)(2)(C). The petitioner proposes the construction of an accessory structure/shed that requires: (1) a variance of nine (9) feet as it is within twenty-one (21) feet of front lot line (Laird Place); (2) a variance of eight (8) feet as it is within two (2) feet of the rear lot line; and (3) a variance of two (2) feet as it is within three (3) feet of the side lot line. The required front lot line setback is thirty (30) feet, the required rear lot line setback is ten (10) feet, and the required side lot line setback is five (5) feet.

Stuart Barr, Esquire, represented the petitioner at the public hearing.

The subject property is Lot 19, Block 24, Chevy Chase Subdivision, located at 8502 Lynwood Place, Chevy Chase, Maryland, 20815, in the R-90 Zone (Tax Account No. 00467027).

Decision of the Board: Requested variance **granted**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioner proposes the construction of 12 x 8 foot accessory structure/shed.
2. At the public hearing Mr. Barr amended the variance request. The original request required three variances from the front, side, and rear lot line setbacks. **The amended request requires one variance, a variance of three (3) feet from the rear lot line. See Exhibit No. 11(c) [building permit denial].**

3. The petitioner testified that the subject property is trapezoidal in shape and that most of the lots in the immediate area are rectangular in shape. The petitioner testified that his lot narrows from north to south and that it is narrowest at the intersection of the two streets. The petitioner testified that there are lots in his neighborhood that are similar in shape, but that those lots are either significantly larger or have a greater depth. The petitioner testified that the application of the required setbacks to his lot would result in the shed being located in the middle of the rear yard. The subject property is 6,742 square feet. See Exhibit Nos. 8 [zoning vicinity map], 13 [enlarged tax map], and 14 [enlarged site plan].
4. The petitioner testified that the subject property is a corner lot located at the intersection of Laird Place and Lynwood Place and that the northern rear yard boundary backs up to an alley. The petitioner testified that the alley widens as it reaches his lot. The petitioner testified that many of the homes in his neighborhood have sheds that are located on the property line or very close to the alley line. The petitioner testified that the subject property's topography from Lynwood Place has a continuous upward incline and that the alley is 5 feet above the highest point in his backyard. The petitioner testified that the rest of the neighborhood is not as steeply pitched. See Exhibit Nos. 18(a) and 18(b) [photographs].

### **FINDINGS OF THE BOARD**

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

*(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the petitioner's lot is substandard for the R-90 Zone and that the application of the required setbacks to the lot result in a very small building envelope. The Board finds that the trapezoidal shape of the petitioner's lot, combined with the lot's steep incline further restricts the property's buildable envelope. The Board finds that these conditions peculiar to the subject property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship to the property owners.

*(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance request for the construction of an accessory structure/shed is the minimum reasonably necessary.

*(c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed construction will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

*(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, **the requested variance of three (3) feet from the required five (5) foot rear lot line setback** for the construction of an accessory structure/shed is granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, and the representations of his attorney, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as **Exhibit Nos. 11(b)** and 5(a) and 5(b).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

Board Chair Allison Ishihara Fultz was necessarily absent and did not participate in this Resolution. On a motion by Catherine G. Titus, seconded by Wendell M. Holloway, with Caryn L. Hines and Donna L. Barron, Vice Chair, in agreement, the Board adopted the foregoing Resolution.

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Donna L. Barron  
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing  
Opinion was officially entered in the  
Opinion Book of the County Board of  
Appeals this 17th day of July, 2007.

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Katherine Freeman  
Executive Director

**NOTE:**

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.